

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ELMER RODRIGUEZ,

Petitioner,

v.

STATE OF NEVADA, *et al.*,

Respondents.

Case No. 3:24-cv-00032-ART-CSD

ORDER

This action is a petition for a writ of habeas corpus under 28 U.S.C. § 2254 by Elmer Rodriguez, an individual incarcerated at Nevada's Lovelock Correctional Center. On January 19, 2024, Rodriguez, *pro se*, filed an Application to Proceed *in Forma Pauperis* (ECF No. 1) and he submitted for filing a Petition for Writ of Habeas Corpus (ECF No. 1-1), and on January 23, 2024, he filed a Motion for Appointment of Counsel (ECF No. 3).

The financial certificate filed with Rodriguez's *in forma pauperis* application shows that he is able to pay the \$5 filing fee for this action. His *in forma pauperis* application will therefore be denied. However, the Court will not set a deadline for Rodriguez to pay the filing fee or file a new *in forma pauperis* application until after appointed counsel appears for him.

The Court has examined Rodriguez's petition as mandated by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and determines that it merits service upon the respondents. The Court will order the petition served upon the respondents, and will direct the respondents to appear, but will not require any further action on the part of the respondents at this time.

State prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances indicate that appointed counsel is necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191,

1 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970)  
2 (per curiam)). The Court may, however, appoint counsel at any stage of the  
3 proceedings if the interests of justice so require. See 18 U.S.C. § 3006A; *see also*  
4 Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. The Court  
5 determines that the interests of justice call for appointment of counsel in this  
6 case. The Court will grant Rodriguez's Motion for Appointment of Counsel and  
7 will appoint the Federal Public Defender for the District of Nevada (FPD) to  
8 represent him.

9 It is therefore ordered that Petitioner's Application to Proceed *in Forma*  
10 *Pauperis* (ECF No. 1) is denied.

11 It is further ordered that Petitioner's Motion for Appointment of Counsel  
12 (ECF No. 3) is granted. The Federal Public Defender for the District of Nevada  
13 (FPD) is appointed to represent the petitioner. If the FPD is unable to represent  
14 the petitioner, because of a conflict of interest or any other reason, alternate  
15 counsel will be appointed. Counsel will represent Petitioner in all federal court  
16 proceedings relating to this matter, unless allowed to withdraw.

17 It is further ordered that the Clerk of the Court is directed to electronically  
18 serve upon the FPD a copy of this order, together with a copy of the Petition for  
19 Writ of Habeas Corpus (ECF No. 1-1).

20 It is further ordered that the FPD will have 30 days from the date of this  
21 order to file a notice of appearance, or to indicate to the Court its inability to  
22 represent Petitioner in this case.

23 It is further ordered that the Clerk of the Court is directed to add Aaron  
24 Ford, Attorney General of the State of Nevada, as counsel for Respondents and to  
25 provide Respondents an electronic copy of all items previously filed in this case  
26 by regenerating the Notice of Electronic Filing to the office of the Attorney General  
27 only.  
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1 It is further ordered that Respondents will have 30 days from the date of  
2 this order to appear in this action. Respondents will not be required to respond  
3 to the habeas petition at this time.

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6 DATED THIS 25<sup>th</sup> day of January 2024.

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9 ANNE R. TRAUM  
10 UNITED STATES DISTRICT JUDGE  
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